

## §214.7

## 36 CFR Ch. II (7–1–14 Edition)

include a statement indicating the Responsible Official's willingness to meet with the affected holder, operator, or solicited applicants to discuss any issues related to the decision and, where applicable, informing term grazing permit holders of the opportunity to request mediation in accordance with 36 CFR 222.20 through 222.26.

(c) If the decision is not appealable, the Responsible Official must include a statement in the written decision informing the affected holder, operator, or solicited applicants that further administrative review of the decision is not available.

### §214.7 Levels of review.

(a) *Appeal.* (1) One level of appeal is available for appealable decisions made by District Rangers, Forest or Grassland Supervisors, and Regional Foresters. If a District Ranger is the Responsible Official, the appeal is filed with the Forest or Grassland Supervisor. If a Forest or Grassland Supervisor is the Responsible Official, the appeal is filed with the Regional Forester. If a Regional Forester is the Responsible Official, the appeal is filed with the Chief of the Forest Service.

(2) No appeal is available for decisions made by the Chief.

(b) *Discretionary review.* (1) Appeal decisions issued by Forest or Grassland Supervisors, Regional Foresters, or the Chief are eligible for discretionary review. If a Forest or Grassland Supervisor is the Appeal Deciding Officer, discretionary review is conducted by the Regional Forester. If a Regional Forester is the Appeal Deciding Officer, discretionary review is conducted by the Chief. If the Chief is the Appeal Deciding Officer, discretionary review is conducted by the Under Secretary for Natural Resources and Environment.

(2) Decisions made by the Chief that fall into one of the categories enumerated in 36 CFR 214.4 are eligible for discretionary review by the Under Secretary for Natural Resources and Environment.

### §214.8 Appeal content.

(a) *General requirements for the contents of an appeal.* All appeals must include:

(1) The appellant's name, mailing address, daytime telephone number, and email address, if any;

(2) A brief description of the decision being appealed, including the name and title of the Responsible Official and the date of the decision;

(3) The title or type and, if applicable, identification number for the written authorization and the date of application for or issuance of the written authorization, if applicable;

(4) A statement of how the appellant is adversely affected by the decision being appealed;

(5) A statement of the relevant facts underlying the decision being appealed;

(6) A discussion of issues raised by the decision being appealed, including identification of any laws, regulations, or policies that were allegedly violated in reaching the decision being appealed;

(7) A statement as to whether and how the appellant has attempted to resolve the issues under appeal with the Responsible Official and the date and outcome of those efforts;

(8) A statement of the relief sought;

(9) Any documents and other information upon which the appellant relies; and

(10) The appellant's signature and the date.

(b) *Specific requirements for the contents of an appeal.* In addition to the general requirements in §214.8(a), the following specific requirements must be included in an appeal, where applicable:

(1) A request for an oral presentation under §214.16;

(2) A request for a stay under §214.13; and

(3) A request to participate in a state mediation program regarding certain term grazing permit disputes under 36 CFR part 222, subpart B.

### §214.9 Filing of an appeal.

(a) *Timeframe for filing an appeal.* An appeal must be filed with the Appeal Deciding Officer within 45 days of the date of the decision.

(b) *Method of filing.* Appeal documents may be filed in person or by courier, by mail or private delivery service, by facsimile, or by electronic mail. Parties to an appeal are responsible for

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ensuring timely filing of appeal documents.

### §214.10 Dismissal of an appeal.

(a) The Appeal Deciding Officer shall dismiss an appeal without review when one or more of the following applies:

(1) The appeal is not filed within the required time period.

(2) The person or entity that filed the appeal is not a holder, an operator, or a solicited applicant of a written authorization that is the subject of the appealable decision.

(3) The decision is not appealable under this part.

(4) The appeal does not meet the content requirements specified in §214.8(a), provided that an appeal may not be dismissed for failure to include an appraisal report which has not been completed by the filing deadline.

(5) The appellant withdraws the appeal.

(6) The Responsible Official withdraws the written decision that was appealed.

(7) An informal resolution of the dispute is reached pursuant to §214.15 or a mediated agreement of a term grazing dispute is achieved pursuant to 36 CFR part 222, subpart B.

(8) The requested relief cannot be granted under applicable facts, laws, regulations, or policies.

(b) The Appeal Deciding Officer shall give written notice of the dismissal of an appeal and shall set forth the reasons for dismissal.

### §214.11 Intervention.

(a) *Eligibility to intervene.* To participate as an intervenor in appeals under this part, a party must:

(1) Be a holder, an operator, or a solicited applicant who claims an interest relating to the subject matter of the decision being appealed and is so situated that disposition of the appeal may impair that interest; and

(2) File a written request to intervene with the Appeal Deciding Officer within 15 days after an appeal has been filed.

(b) *Request to intervene.* A request to intervene must include:

(1) The requester's name, mailing address, daytime telephone number, and email address, if any;

(2) A brief description of the decision being appealed, including the name and title of the Responsible Official and the date of the decision;

(3) The title or type and, if applicable, identification number for the written authorization and the date of application for or issuance of the written authorization, if applicable;

(4) A description of the requester's interest in the appeal and how disposition of the appeal may impair that interest;

(5) A discussion of the factual and legal allegations in the appeal with which the requester agrees or disagrees;

(6) A description of additional facts and issues that are not raised in the appeal that the requester believes are relevant and should be considered;

(7) A description of the relief sought, particularly as it differs from the relief sought by the appellant;

(8) Where applicable, a response to the appellant's request for a stay of the decision being appealed;

(9) Where applicable, a response to the appellant's request for an oral presentation;

(10) Where applicable, a response to the appellant's request for mediation of a term grazing permit dispute under 36 CFR part 222, subpart B; and

(11) The requester's signature and the date.

(c) *Response to a request to intervene.* The appellant and Responsible Official shall have 5 days from receipt of a request to intervene to file a written response with the Appeal Deciding Officer.

(d) *Intervention decision.* The Appeal Deciding Officer shall have 5 days after the date a response to a request to intervene is due to issue a decision granting or denying the request. The Appeal Deciding Officer's decision shall be in writing and shall briefly explain the basis for granting or denying the request. The Appeal Deciding Officer shall deny a request to intervene or shall withdraw a decision granting intervenor status as moot if the corresponding appeal is dismissed under §214.10.